IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP NO. 20808 of 2006

DATE OF DECISION: 24.1.2007

Gurnam Singh ....Petitioner.

Versus

The State of Punjab and others ....Respondents.

CORAM: HON'BLE MR.JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

PRESENT: Mr.Ashwani Kumar Chopra, Senior Advocate
(Mr.J.P.Yadav, Advocate, with him)
for the petitioner.

J.S. Khehar, J. (oral)

The facts narrated in the instant writ petition reveal that the petitioner was inducted into the service of the respondents as a Junior Environmental Engineer on 2.6.1979, and that, respondent No.3 came to be appointed against the same post more than six years later on 31.1.1985. Onward promotion from the post of Junior Environmental Engineer is to the post of Assistant Environmental Engineer. At the stage of promotion to the post of Assistant Environmental Engineer, respondent No.3 stole a march over the petitioner and came to be promoted as such on 29.2.1988. The petitioner was promoted as Assistant Environmental Engineer on 27.7.1989.

Both the petitioner and respondent No.3 were promoted

against the post of Environmental Engineer on 2.11.1996 through a common order. Onward promotion from the post of Environmental Engineer is to the post of Senior Environmental Engineer. Here, once again respondent No.3 stole a march over the petitioner as he came to be promoted as Senior Environmental Engineer on 17.12.2004. It is the aforestated facts, which constitute the matrix and the foundation of the propositions advanced by the learned counsel for the petitioner.

It is the first contention of the learned counsel for the petitioner that promotion to the post of Senior Environmental Engineer ought to have been regulated by the Punjab State Board for the Prevention and Control of Water Pollution Employees Service Regulations, 1980 (hereinafter referred to as the 1980 Regulations). In this behalf, learned counsel for the petitioner has invited our attention to the appointment order of the petitioner as Junior Environmental Engineer dated 27.7.1988 (appended to the instant writ petition as Annexure P-2). Paragraph 2 of the aforesaid order of appointment reveals, that the petitioner, as well as, another official appointed by promotion to the post of Junior Environmental Engineer were to be governed by the provisions of the 1980 Regulations. On the basis of the aforesaid condition, depicted in the order of appointment of the petitioner, it is the vehement contention of the learned counsel for the petitioner that only the 1980 Regulations could have been taken into consideration for effecting promotion to the post of Senior Environmental Engineer.

We have considered the aforesaid contention of the learned counsel for the petitioner. A perusal of Regulation 2 of the 1980

Regulations reveals, that these Regulations would be applicable to all classes of employees, as have been specified in Appendix `B'. Appendix B, however, does not contain the post of Senior Environmental Engineer. It is, therefore, apparent, that the 1980 Regulations do not regulate either the recruitment, or the conditions of service, for the post of Senior Environmental Engineer. In view of the above, it is not possible for us to accept the first contention of the learned counsel for the petitioner, namely, that it was improper for the respondents not to resort to 1980 Regulations while effecting promotions to the post of Senior Environmental Engineer.

The second contention of the learned counsel for the petitioner is, that it is not open to the respondents to regulate recruitment to any post in the service of the respondents by the Punjab Pollution Control Board Employees Service Regulations, 2002 (hereinafter referred to as the 2002 Regulations). The pointed contention of the learned counsel for the petitioner is, that the 2002 Regulations have not been notified and till the same are notified, they cannot be given effect to or implemented. For the instant proposition, learned counsel for the petitioner has placed reliance on a decision rendered by a Division Bench of this Court in Pardeep Kumar Thakur V. Punjab Pollution Control Board, 1997(4) Services Cases Today 345. Relying on the aforesaid judgment, learned counsel has invited our attention to paragraphs 6 and 7 thereof. The same are being extracted hereunder for facility of reference:-

"6. It is the admitted position that in exercise of the

powers under Section 12, the Board had framed the regulations which were duly approved by the State Government in the year 1980. Thereafter, the 1980 regulations were notified. Factually, the regulations which are alleged to have been framed by the Board in 1987, have not been approved by the State Government till today. Consequently, it is clearly established on record and has not even been disputed by the learned counsel for the respondents that the 1987 regulations are not legally enforceable.

7. Mr. Saron, learned counsel for the respondent has, however, contended that the 1987 regulations, though not approved by the State Govt. could be enforced by the Board as guidelines. This contention is wholly misconceived. Whatever cannot be done directly, cannot be allowed to be done indirectly. The action of the Board in invoking the 1987 draft amount to altering the 1980 regulations. It amounts to violation of the statutory regulations. The Board cannot be permitted to add to the statutory regulations, the qualification which have not been approved by the competent authority. In the present case, the Board is adding the qualification of experience to the statutory regulations, even though this provision has not yet been approved by the State Government in accordance with the provisions of Section 12(3A). That being so, the contention

> raise don behalf of the respondent-Board that the regulations provide guidelines which can be enforced, is wholly untenable and cannot be accepted. It is, consequently, rejected."

Having considered the aforesaid contention of the learned counsel for the petitioner, we fail to find any merit therein as well. In fact, in our considered opinion, the judgment relied upon by the learned counsel is clearly inapplicable to the facts and circumstances of this case. A perusal of the conclusions drawn by the Division Bench reveal, that for the issue, which was subject matter of challenge, in Pardeep Kumar Thakur's case (supra), the governing Regulations were the 1980 Regulations. This Court arrived at the conclusion, that till the 1980 Regulations were not appropriately amended, or till the successor Regulations were not appropriately notified, the same could not be given effect to. That, with respect, is our view as well. In the controversy raised in the instant writ petition, the 1980 Regulations, as we have already concluded (while dealing with the first submission of the learned counsel for the petitioner) do not deal with either the methods of recruitment or the conditions of service, for the post of Senior Environmental Engineer. As such, the post of Senior Environmental Engineer (prior to the framing of the 2002 Regulations) cannot be stated to have been governed by any statutory provision including the 1980 Regulations. In such circumstances, the framing of the 2002 Regulations, which stand approved in terms of the order dated 28.4.2003 (Annexure P7) by the State Government, even though not notified must be deemed

to have the authority of executive instructions, regulating the issue of recruitment to the post of Senior Environmental Engineer, as well as, conditions of service therefor, till the eventual notification of the said Regulations.

The third contention of the learned counsel for the petitioner emerges from Regulation 9 of the 1980 Regulations. The aforesaid Regulation, which has been extracted in paragraph 7 of the writ petition, is being reproduced hereunder:-

> "9. Qualifications – Qualifications for direct appointment to the posts under the Board shall be as laid down in Appendix `C':
>
> 2. Qualifications for the posts other than those mentioned in Appendix `C' which might be created by the Board after coming into force of these regulations shall be as laid down by the Board from time to time."

Reliance has also been placed on Regulation 13 of the 1980 Regulations, which is also being reproduced hereunder:-

> "13. Appointment by promotion:- All promotions to posts under the Board shall be made on the basis of merit-cum-seniority and no person shall have a right to be promoted to any post on the basis of seniority alone."

Whilst the rejection of the submission of the learned counsel for the petitioner, on the basis of Regulation 9, does not involve any serious consideration on account of the fact, that Regulation 9 of the 1980 Regulations, relates to prescription of qualifications for appointment by

direct recruitment to posts specified in Appendix `C' of the 1980 Regulations. Since the claim of the petitioner is not for appointment as against direct recruitment, the aforesaid Regulation is clearly inapplicable. Further more, since the post of Senior Environmental Engineer does not figure in Appendix `C' of the 1980 Regulations, these Regulation is clearly inapplicable to the controversy raised by the petitioner which is limited to his claim for promotion to the post of Senior Environmental Engineer. In so far as the averment made by the learned counsel for the petitioner, on the basis of Regulation 13, which postulates that for all appointments to the posts under the Board, the principle of merit cum seniority would be the regulating principle for promotion. The claim of the petitioner is that no other consideration can be taken into consideration for the purposes of promotion to the post of Senior Environmental Engineer, except the principle of merit-cum-seniority. For the same reason, as has been recorded hereinabove, namely, that Regulation 13 of the 1980 Regulations, will be governed by Regulation 2, which makes the provisions of the 1980 Regulations applicable only to posts specified in Appendix B, and as such, Regulation 13, extracted hereinabove, would be clearly inapplicable to the post of Senior Environmental Engineer as the same is not one of the specified posts in Appendix B. As to whether, any other ingredients can be taken into consideration for promotion to the post of Senior Environmental Engineer? In our view, the answer for the same cannot be expected from the 1980 Regulations, which do not cater to either the modes of recruitment or the conditions of service for the post of Senior

Environmental Engineer. As such, we are satisfied that Regulation 13 of the 1980 Regulations cannot be relied upon for any beneficial purpose by the petitioner as noticed hereinabove.

The next contention of the learned counsel for the petitioner is that respondent No.3 was improperly and unfairly considered and promoted to the post of Assistant Environmental Engineer by an order dated 29.2.1988, and thereafter, once again, to the post of Senior Environmental Engineer by an order dated 17.12.2004. In order to show unfairness at the hands of the respondents, learned counsel for the petitioner has invited our attention to the proceedings of the minutes of the Selection Committee for recruitment to Class II posts in the Punjab Pollution Control Board, held on 12.12.1994. It is not possible for us, at this stage, to examine the validity of the promotion of respondent No.3 against the post of Assistant Environmental Engineer, as respondent No.3 came to be promoted as such as far back as on 29.2.1988. Even a civil suit, as of now, is not competent at the hand of the petitioner, to challenge the order of promotion of respondent No.3 to the post of Assistant Environmental Engineer on 29.2.1988, in view of the law of limitation. In so far as the challenge at the hands of the petitioner for promotion of respondent No.3 as Senior Environmental Engineer vide order dated 17.12.2004 is concerned, the aforesaid promotion having been made in the year 2004 on the basis of the superior claim of respondent No. 3 on having stolen a march over the petitioner by his earlier promotion to the post of Assistant Environmental Engineer with effect from 29.2.1988 (whereas the petitioner was promoted as such only on 27.7.1989, is

clearly misconceived. All the same a writ petition filed under Article 226 of the Constitution of India so as to challenge an order of promotion passed in 2004 in the year 2007, is clearly barred by reasons of delay and laches. Accordingly, even the challenge to the promotion of respondent No.3 as Senior Environmental Engineer vide order dated 17.12.2004 is hereby declined.

The last contention of the learned counsel for the petitioner is that the petitioner's career prospects will be completely marred in case the respondents are allowed to implement the 2002 Regulations. In this behalf, the simple submission of the learned counsel for the petitioner is, that at the time of induction of the petitioner into the service of the respondents as Junior Environmental Engineer,he possessed the qualification of Diploma in Engineering. With the aforesaid qualification, keeping in mind the rule of merit-cum-seniority, he could have been promoted to all the existing posts in the Board falling in the line of the engineering cadre. By the prescription of the additional qualifications in the 2002 Regulations (for promotion to the post of Senior Environmental Engineer) according to the learned counsel for the petitioner, the vested rights of the petitioner have been violated and his claim for onward promotion has been stalled for all times to come. It is not possible for us to accept the instant contention of the learned counsel for the petitioner as well. First of all, the petitioner had no vested right for promotion to the post of Senior Environmental Engineer at the time of his induction into the service as a Junior Environmental Engineer. Even the submission of the learned counsel for the petitioner, on the basis of the 1980

Regulations, has been found by us hereinabove to be misconceived on account of the fact, that the aforestated Regulations are irrelevant for the post of Senior Environmental Engineer. As to whether, the qualifications stipulated by the respondents for promotion to the post of Senior Environmental Engineer, are unjustified or not, is neither for us to adjudicate, nor is it a matter of challenge at the hands of the petitioner. The only challenge at the hands of the petitioner is, that no further qualifications could have been stipulated by the respondents for promotion to the post of Senior Environmental Engineer. This submission, in our view, cannot be accepted. An employer has the inherent right to specify and prescribe qualifications for appointment to the posts created in a service, as also, the modes of recruitment thereto, and unless the same are arbitrary and can be declared as violative of Article 14 of the Constitution of India, it would not be within the domain of a Court to annul the same. So far as the post of Senior Environmental Engineer is concerned, the qualifications stipulated therefor have been narrated in the pleadings and are a part of Appendix B, attached to the 2002 Regulations. Relevant extract of the qualifications prescribed for promotion to the post of Senior Environmental Engineer are being extracted hereunder:-

"Promotion	:	From amongst the Environmental Engineers working in the Board who have an experience of working as such for a minimum period of seven years and possess at least Bachelor's degree of AMIE in Engg. from recognised Institution/University."

Having given our thoughtful consideration to the instant issue canvassed by the learned counsel for the petitioner, as well as, the qualifications stipulated for promotion to the post of Senior Environmental Engineer (as have been extracted hereinabove) we are unable to arrive at the conclusion that the same can be described as arbitrary or violative of the provisions of Article 14 of the Constitution of India. As such, it is not possible for us to accept the instant plea as well.

For the reasons recorded hereinabove, we find no merit in this ;petition. The same is, accordingly, dismissed.

(J.S. Khehar)
Judge

(S.D. Anand)
Judge

January 24, 2007.
vig